



ADOPTION RESOURCES OF WISCONSIN

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January 7, 2010

**Senate Committee on Judiciary, Corrections, Insurance, Campaign, Finance
Reform and Housing**

Hearing on AB 214 and SB 140

Presented by Colleen M. Ellingson, CEO

AB 214 and SB 140 bring significant improvements to adoption for birthparents, adoptive parents and children. My involvement in the creation of this initiative stems from my roles in Wisconsin. As CEO of Adoption Resources of Wisconsin, an organization that has been providing assistance on foster care and adoption issues since 1984, we have assisted countless birth parents as they are contemplating a decision to terminate their parental rights and need assistance finding information and agencies to assist them. A majority of birthparents who contact us are in a crisis and most often are served best by what we do – help them find emergency housing, food and assistance with domestic violence issues. We bring information to families looking to foster or adopt, including all types of adoption. We provide significant post placement assistance to foster and adoptive families throughout the state.

Post Termination contact:

As a member of the Bureau of Milwaukee Children Welfare Partnership Council and co-chair of the committee on out-of-home care and adoption, we spent almost two years looking at some of the barriers connected to permanence for children in Milwaukee County. Former Representative Sue Jeskewitz was a member of the BMCW committee during this time. We determined that one factor that delayed permanence was due to involuntary termination of parental rights hearings which are more complex and time intensive than a voluntary termination of parental rights. In discussions with birthparents and court personnel, it was clear that birth parents knew that they were unable to care for their children – but they wanted to have some ability to continue contact. We looked at adoption law throughout the U.S. (with the assistance of the Legislative Reference Bureau) and found that the majority of states have a provision that allows contact after adoption. Current adoption research shows that maintaining family connections after adoption is healthy for children and all the parents – both birth and adoptive.

The proposed bill brings a “win” to all parties, birthparents, children and adoptive parents. To date, Wisconsin has had no contact law. However, there have been frequent discussions

between birthparents and the proposed family prior to the termination of parental rights (TPR). Sometimes promises for contact were informally made by the adopting family – but birthparents were told that there was no legal law in Wisconsin for post-TPR contact. This mixed message is very hard for birth parents and leads to problems after adoptions. This law gives a clear understanding of allowable contact which gives reassurance to all the adults. It gives clear protection to children – giving them the birth family connections they need. If, for some reason, post-TPR contact is not working successfully, it allows a hearing in Family Court. The decision from that hearing is based solely on best interest of the child.

Adoption Evaluations/Studies

This portion of the bill was specifically requested based on the role that Adoption Resources of Wisconsin has. In our roles for the Wisconsin Department of Children and Families as the Wisconsin Adoption Information Center and as the Wisconsin Adoption Exchange (to assist in recruitment of homes for specifically identified children), we received complaints from families throughout the years related to the sharing of adoption studies. Adoption evaluations/home studies are a required element of approving the potential family for adoption. A significant investigation includes such elements as criminal background checks, fingerprints, domestic violence checks and medical examination. Reference checks from employers as well as others who know the family are done. The social worker evaluates the family's capacity to parent a child not born to them, their ability to handle challenges such as mental health issues, behavioral issues. Families are evaluated as to the age of the child that can initially come into their home. For example, a family who has parented children already might be more capable handling a teenager than a family that has never parented a child.

An adoption evaluation is done each time a family adopts a new child. It usually takes a number of months to complete. It is very specific to each family. It can be compared to a medical record in that it is the property of the family and is viewed that way by the Wisconsin Department of Children and Families. Only the reference checks are not shared with the adoptive family since they are confidential.

Two areas of concern: In **international adoptions**, families self-pay the costs of the adoption which often runs in the range of \$30,000 to over \$50,000. A Wisconsin-based agency will do the evaluation of the family. Families work with these agencies on a specific country and the adoption study is prepared for that country. Countries today often close their adoption



programs – recently Guatemala closed their program. China, which used to be an “easy-access” program for families, now has a waiting time that has grown from one to four years when it had been one. Agencies may have a narrow number of countries they work with. If a program is closed and that agency does not have another country the family wants to work with, the family needs to find a new Wisconsin agency. In best practice, the first agency would send along a copy of the adoption evaluation to the new agency. That would reduce the cost for the family since the new agency could build from the first evaluation. If the agency refuses to share the study, families need to pay the complete cost of a new evaluation. This is a significant cost for the families. This law would require agencies to share studies.

For **adoptions from the child welfare system**, the Wisconsin Dept. of Children and Families funds certain private adoption agencies to provide the adoption evaluations of potential families. Families should have the ability to use their study initially throughout the entire state. If they are not able to utilize it for a Wisconsin child welfare adoption, DCF allows it to be utilized for children in other states’ child welfare system. Again, this law clarifies what is best practice and makes it a requirement to share studies in a timely manner. Children need permanency in their lives - this bill helps reduce any unnecessary delays in that process.





Alberta Darling

Wisconsin State Senator

Member, Joint Committee on Finance

**Testimony at Senate Judiciary, Corrections, Insurance, Campaign Finance Reform,
and Housing Committee**
SB140/AB 214 relating to contact between a child and birth relative after a TPR
January 7, 2010

I come before you today to express my support for Senate Bill 140 and Assembly Bill 214.

Former State Representative Sue Jeskewitz came to me and asked if I would continue her work on this legislation. She was leaving the Legislature but she didn't want all of the work that had gone into this bill to die with her retirement. I eagerly agreed after reading the bill and hearing from others that were at the table while the bill was being drafted.

I am always looking for ways to help move kids to permanency faster and I believe this legislation does that. According to a Milwaukee Children's Court Judge I consulted, biological parents are often reluctant to voluntarily terminate their parental rights for fear of never knowing what became of their children. The judge argued that allowing a post-termination contract that clearly outlined what could and couldn't be shared would help alleviate that fear and move parents to a TPR quicker. In turn, the child could be available for adoption sooner and hopefully chosen to become part of a loving family.

There will be some who argue against this type of arrangement for a number of reasons and I respect those arguments. In fact, post-termination contact is not going to work with all families but that's the beauty of this bill. The contract is completely voluntary and can be altered if the circumstances change.

Thank you for your time and attention and I am happy to entertain questions at this time.

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January 7, 2010

TO: Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance
Reform and Housing

FR: Attorney Henry Plum, Legislative Chair
Children & the Law Section

RE: Support for AB 214/SB 140

For many years, the board of directors of the Children & the Law Section of the State Bar of Wisconsin has discussed the possibility of a change to the current state of post-adoption contact between birth and adoptive families in Wisconsin. We were pleased to see these bills come before the Wisconsin legislature for consideration and actively support the passage of AB 214 and the companion bill SB 140.

The rigid Victorian-era standard which demonized a woman for placing a child for adoption, cast secrecy and shame on the adopted child and prevented the adopted child from having any access to medical, social or genetic history, has given way in the last part of the 20th Century to a model for adoption which incorporates more openness. In the past four decades social science research has demonstrated that children benefit from knowing their history and, in many cases, from knowing their biological family members even if those family members are not able, fit or willing to provide the daily care and nurturing a child requires.

However, Wisconsin law does not currently provide a legally enforceable means for a child's biological family to continue contact after termination of parental rights has been ordered. Under present law, all parties to a termination of parental rights and adoption plan must rely on trust and goodwill to ensure that verbal promises made for continued contact with the family and/or child will be followed in the future. As a result, in many cases, the lack of ability to put in place a written, enforceable agreement results in the trial of a termination of parental rights case which could otherwise be resolved in a voluntary proceeding.

Terminations of parental rights cases in Wisconsin encompass many different fact scenarios. These include:

- Voluntary placement of a child with non-relatives
- Voluntary placement of a child with relatives
- Termination of one biological parent's rights and adoption by a stepparent
- Termination of both parents' rights after the child has been removed from the home as a result of abuse and/or neglect.

State Bar of Wisconsin

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An enforceable post-termination contact agreement, in many cases, is in the best interest of the child due to existing relationships between the child and parent or extended family members. In addition, an open adoption agreement which permits the child to obtain answers to questions about medical history, heritage and other biological family questions helps to meet the child's emotional security and health care needs.

Both bills, as currently drafted, provide direction to the courts for approval of post-termination agreements. Among other things, the bills include a balancing of interests by recognizing the child's position on continued contact if the child is over age 12, requiring the approval of the guardian ad litem who acts in the child's best interest, and requiring a finding by the court that the provisions of the contact agreement are voluntary and not the result of coercion or duress. The Section believes that such direction is necessary in order to have uniform consideration taking into account the individual facts of each child's unique situation.

Further, the Section supports the provisions of these bills which provide discretion to the courts to determine when such an agreement is appropriately in a child's best interest since there will be cases where further contact between a biological relative and the child is not be appropriate.

In summary, the Children & the Law Section believes that passage of a bill which creates a legal means to enforce a promise of continued post-termination contact will benefit Wisconsin children by moving children whose parents' rights are being terminated into permanent homes more promptly and by enhancing the ability of the litigants and the courts to consider – and provide for – all aspects of a child's family situation.

The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.

The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.

If you have questions about this memorandum, please contact Sandy Lonergan, Government Relations Coordinator, at slonergan@wisbar.org or (608) 250-6045.

January 6, 2010

To: Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing

Re: 2009 Assembly Bill 214

Re: 2009 Senate Bill 140

This proposed legislation has raised several serious concerns for me since I first learned of it. I believe it will have a profoundly negative effect on the pool of prospective adoptive resources. In fact, if this proposed legislation were in place at the time of our adoptions, given the family situation of the special needs kids we adopted as well as the character of the biological family members, we would not have gone through with three of the four adoptions. I am opposed to the idea that a child's biological family, where a Termination of Parental Rights is involved, should be given any kind of visitation rights that can be enforced by the courts

Background:

My wife and I have been foster parents in Racine County since 1999, caring for about two dozen children over the years. Through the State of Wisconsin's Special Needs adoption process we have adopted 4 special needs children who had first been placed in our home as foster children by Racine County. The children are not related to one another biologically in any way, and were adopted at separate times after court supervised and approved Termination of Parental Rights processes.

Three of our adopted children come out of exceptionally dysfunctional family systems as evidenced by the neglect, addiction and violence issues that caused the children to be detained into protective custody in the first place and ultimately resulted in the termination of the parents' rights. The fourth of our adopted children was abandoned by the birth mother at the hospital a few hours after birth. While this last situation does not directly impinge on my opinion of the proposed legislation because there is no record of extended family to receive visitation privileges, it does contain a small factor that adds to my concerns.

Issues and Concerns:

1. Children are detained into Protective Services because there is a need. The process is set up so that the parents of those children in protective custody are helped by the county's social services arm to make the changes necessary to have their children returned to their care. Parents whose parental rights have been terminated are adjudicated by the courts as not being able or willing to make the changes necessary to regain the custody of their children. This is an incredibly serious move on the part of the state, but one that makes it possible for the detained children to be cared for in a new, more stable, more secure, adoptive family. That stability and security is significantly disrupted when those who have

been part of the child's former dysfunctional family system contact the adopted child in the new family system.

Our oldest adopted child would make great strides in growth, bonding, and experiencing a sense of security within our family as a toddler and preschooler until an older sibling would seek her out and tell her that her adoptive family wasn't her real family, and that her biological parents were planning to take her away. It often took days or weeks to regain the lost sense of connectedness and security.

2. Children are detained into Protective Services on issues that surround their safety and well-being. A biological mother addicted to alcohol, cocaine or heroin, using frequently during the pregnancy, presents a significant risk to her unborn child. Others in the extended family deal with drug addictions, although that information is not known by the social workers and case managers. Allowing visitation by extended family with values and habits similar to the parents whose rights have been terminated and whose values and habits are dissimilar to the adoptive parents causes instability and insecurity in the fostered or adopted child.

Our last adopted child's birth mother lost 65 pounds during her pregnancy due to cocaine addiction and the surrounding social problems brought on by her addiction. She wanted her mother to be in contact with the child on a regular basis. It was learned later, after the termination of her parental rights, that her mother also had addiction issues that she had kept hidden. If she had been allowed visitation, her addiction and the resulting behaviors of missed meetings, unkept promises and alternative values would have been in direct conflict with our own value system, thus causing the child confusion and emotional trauma.

3. Violence is all too real in the lives of dysfunctional families. It can permeate an extended family as the only means to solving problems. It threatens the safety and security of children, leads to them being detained in Protective Services and, unless dealt with appropriately, to the termination of the parents' rights. For obvious reasons, that violence should not follow them into their adoptive families.

When picking up our third adopted child from a supervised parent visitation during the foster process, one of the parents' relatives was angry enough about the foster situation to come into the side door of our passenger van ending up next to my wife, who was the driver. With loud angry words and waving fists, he threatened her physically in front of two of our children, another foster child and the child we had just picked up. Fortunately in this instance, the case manager and visitation supervisor was still present and managed to defuse the immediate situation. The long-term effect, however, was more difficult to manage. Besides an adult caregiver being intimidated and frightened, the children were terrified. It took weeks to work through that one event.

4. The text of the proposed legislation constantly repeats the mantra "in the best interest of the child." If the parental rights of the biological parents have been terminated, it is presumed to be in the best interest of the child. It seems that giving a child a new start with an adoptive family would be hamstrung by allowing members of the extended family of the people whose rights have been terminated for just cause to impinge on the child's new opportunity for safety, security and connectedness. Such visitation will bring back ghosts of the previous situation, making it more difficult for the child to achieve the goals the termination and adoption have as their primary purpose.

5. Putting the burden for redress on the adopted family in case the visitation privileges prove not to be in the child's best interest is inappropriate at best. The time, energy, attention, finances and all else that would go into seeking such redress from the juvenile court system would be better spent in continuing to strengthen the bonds and provide opportunities for growth for the adopted child. We do, however, appreciate the fact that this proposed legislation only allows the courts to reduce the extended family members' visitation and not put more of a burden on the adoptive family.

6. This legislation will put more pressure on prospective adoptive parents to accept such a visitation as an unwritten part of the adoption process in spite of being uncomfortable with the proposal. While the text of the proposed legislation indicates the visitation arrangement should not be made in connection with any threats or promises, the reality is that things are said to foster and prospective adoptive parents that are not in keeping with the law. We experienced this when we were told that foster parents were never asked to be prospective adoptive parents when in fact foster parents are required to be the first asked. My concern is that prospective adoptive parents will be told 'it will make the whole process go so much smoother if you will accede to this request.' In spite of their misgivings caused by their knowledge of the child's background and family situation, yet out of their deep connection to and love for the child, they will agree in order to make it look like they're cooperative and better candidates to adopt the child.

During the foster process for the child we adopted who had been abandoned immediately after birth, we were told that foster parents were not candidates as adoptive resources. We learned later that an unwritten agreement had been made with another private placement agency to place this child in an adoptive family. After several months of caring for the child we believed this child would fit into our family quite well. When we learned that foster parents were to be the first asked about prospective adoption, our trust level for the social worker involved, for the supervisor, and for the entire department plummeted. I am concerned that this will become an issue that will be inappropriately emphasized by social service personnel during the foster/adoption process to make things go smoother during the TPR process but create long-term problems after the adoption.

7. Finally, I believe this proposed legislation is a misguided attempt to bring the open-adoption process into the realm of parental rights terminations and special needs adoptions. They are very different kinds of adoptions with different functions and different purposes. While I sympathize with the plight of extended family members in losing contact with children they are related to, the purpose of the latter type of adoptions is to protect the child and give the child a chance at a normal childhood in a safe, secure and connected family system. This proposed legislation turns the whole intent up-side down by putting the extended family's perceived feelings or needs before the child's real needs.

Thank you for allowing me to comment on this proposed legislation. Thank you also for taking up this task of protecting the most powerless in our society. Our children do not vote, do not have any kind of clout (financial, political or otherwise), do not even understand what may be happening around them in dysfunctional family systems. It is our task as adults to care for them to the best of our abilities whether they be our own biologically or otherwise.

Sincerely,

Rev. William Mains

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